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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/924,592	08/09/2001	Syuichi Sekine	040301/0229	3589
22428	7590	01/13/2006	EXAMINER	
FOLEY AND LARDNER LLP SUITE 500 3000 K STREET NW WASHINGTON, DC 20007				WIMER, MICHAEL C
ART UNIT		PAPER NUMBER		
		2828		

DATE MAILED: 01/13/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>
	09/924,592	SEKINE ET AL.
	<b>Examiner</b>	<b>Art Unit</b>
	Michael C. Wimer	2828

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 12/20/2005.
- 2a) This action is FINAL.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-26 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) 1 and 2 is/are allowed.
- 6) Claim(s) 3-26 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All    b) Some \* c) None of:
  1. Certified copies of the priority documents have been received.
  2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

1) <input type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413)
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	Paper No(s)/Mail Date. _____
3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____	5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)
	6) <input type="checkbox"/> Other: _____

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 103***

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 3-26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Watanabe (D298244) in view of Wegner (4018998).

Regarding Claims 3-26, Watanabe shows specifically in Figure 10, a radio communication device comprising a main device casing that includes a microphone (unnumbered but shown as an aperture below the center row of keys on the keypad, below the second key under the zero key) and an antenna, shown extended above a side surface of the main device casing, and a pivotable device casing shown hinged in the closed position in Figure 9 and opened in Figure 10 and containing a plurality of apertures or holes where the speaker is positioned within the pivotable device casing, and where pivoting of the casing is such that the user's head is positioned at least a predetermined distance away from the antenna of the main device casing and a front surface of the upper portion of the main device casing faces a back surface of the pivotable device casing (defined as the back surface because it is behind the front surface where the speaker holes are defined). Although the back surface of the pivotable device casing is shown in a plane that is parallel to the plane of the front surface

of the main device casing, a skilled artisan would have found it to be obvious to provide any angle for the pivotable device casing, rather than parallel to the main device casing, since the operation of the phone would not be interrupted or changed so as to prevent the user from hearing as his head is placed against the surface of the speaker holes. To illustrate such obviousness, Figure 8 shows the pivotable device casing in an intermediate position between open and closed. Further, evidence of obviousness for an angled arrangement of pivotable device casing and main device casing, is illustrated by Wegner when a skilled artisan views Figures 1 and 2 therein, and the surfaces 1b and 2b are formed on respective casings at an angle to the main surfaces thereof, which allows the casings to be disposed at an angle to each other as clearly shown in Fig. 2 thereof. Figures 3 and 4 of Wegner show the parallel planes of the front and back surfaces of the casings in the same way as shown by Watanabe. In view of the particular design of angling the surfaces, as done by Wegner in Figures 1 and 2, it would have been obvious to the skilled artisan to employ such an angled relationship of the casings in Watanabe, particularly since the operability is not destroyed by such a modification, as the user may still place his head against the speaker apertures when such casings are at such an angle with respect to each other. Such positioning would allow for adjustment of the distance between speaker and microphone, particularly when different users of varying ages, having a different distance between ear and mouth, use the phone.

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claims 3-16 and 20-26 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In Claim 3, line 7, there appears to be no proper antecedent for "bead". The claim is indefinite because "bead" should be --head--.

In Claim 20, the last three lines are unclear and uncertain because they state that the front surface of the (upper portion of the) second casing faces a back surface of the first casing. This appears to be contradictory to lines 3 and 4 where the speaker is positioned on the front surface of the second casing.

***Response to Arguments***

5. Applicant's arguments with respect to claims 3-26 have been considered but are moot in view of the new ground(s) of rejection.

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael C. Wimer whose telephone number is (571) 272-1833. The examiner can normally be reached on M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Minsun O. Harvey can be reached on (571) 272-1835. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 2828

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Michael C. Wimer  
Primary Examiner  
Art Unit 2828

MCW  
01/03/2006